

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHRISTOPHER T. WHITTON,

Case No. 2:15-cv-01399-APG-PAL

Plaintiff,

ORDER

v.

(IFP Application – Dkt. #5)

OFFICER MORTIMER, et al.,

Defendants.

This matter is before the Court on Plaintiff Christopher T. Whitton's amended Application to Proceed *In Forma Pauperis* (Dkt. #5), filed September 8, 2015. Plaintiff is a prisoner proceeding in this action *pro se*, which means that he is not represented by counsel. *See* LSR 2-1. This proceeding is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and LR IB 1-9.

Pursuant to 28 U.S.C. § 1915 and LSR 1-1 of the Local Rules of Practice, any person who is unable to prepay the fees in a civil case may apply to the Court for authority to proceed *in forma pauperis* ("IFP"), meaning without prepaying the full three hundred fifty dollar (\$350.00) filing fee.¹ In general, when a district court grants a prisoner IFP status, federal law states that "the prisoner shall be required to pay the full amount of the filing fee." 28 U.S.C. § 1915(b)(1). The district court determines the appropriate amount of an initial partial filing fee based on a formula provided in the statute. *Id.* Prisoners must pay an initial partial filing fee of the greater of twenty percent (20%) of the average monthly deposits or twenty percent (20%) of the average monthly balance of his account for the six months immediately preceding the start of this action. *See* 28 U.S.C. § 1915(b)(1). After the initial partial filing fee is paid, the facility having custody

¹ Pursuant to the Court's Schedule of Fees dated January 1, 2015, the administrative fee of \$50.00 does not apply to persons granted *in forma pauperis* status under 28 U.S.C. § 1915.

1 of the prisoner will forward payments from the prisoner's account each month. *See* 28 U.S.C.
 2 § 1915(b)(2). Plaintiff is therefore advised that even if this action is dismissed, he must still pay
 3 the full filing fee pursuant to § 1915(b) and the monthly payments from Plaintiff's inmate
 4 account will continue until the balance is paid. A prisoner's failure to pay the initial partial filing
 5 fee before the deadline stated in the court's order, which typically allow 30 days, "shall be cause
 6 for cause for dismissal of the case." LSR 1-3(c).

7 Here, Plaintiff has submitted a Complaint along with the financial affidavit, financial
 8 certificate, and inmate account statement required by 28 U.S.C. § 1915(a)(2) and LSR 1-1 and 1-
 9 2. Plaintiff's financial affidavit shows that he is unable to prepay fees and costs or give security
 10 for them. Accordingly, the Court will grant his request to proceed IFP pursuant to § 1915(a).
 11 Plaintiff's average monthly balance is \$61.35, and his average monthly deposits are \$112.35.
 12 Therefore, the Court finds that Plaintiff must pay an initial partial filing fee of \$22.47, and
 13 Plaintiff shall have until November 4, 2015, to submit his partial filing fee.

14 Upon receipt of the initial partial filing fee, the Court will screen Plaintiff's Complaint as
 15 required by 28 U.S.C. §§ 1915(e)(2) and 1915A(a); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th
 16 Cir. 2000) (en banc) (noting that § 1915(e)'s screening requirement "applies to all *in forma*
 17 *pauperis* complaints").² If Plaintiff's Complaint states a valid claim for relief, the Court will
 18 direct the Clerk of the Court to issue summons to the defendant(s) and instruct the United States
 19 Marshal Service to serve the summons and complaint. *Cf.* Fed. R. Civ. P. 4(c)(3); LSR 1-3(c)
 20 (requiring that a prisoner's initial partial filing fee be paid "*before* the Court will order service of
 21 process").

22 Accordingly,

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 27 ² 28 U.S.C. § 1915A(a) requires district courts to "review, before docketing, if feasible or, in any event,
 28 as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from
 a government entity or officer or employee of a governmental entity."

IT IS ORDERED:

1. Plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. #1) is **GRANTED**. Plaintiff is permitted to maintain this action to conclusion without the necessity of prepaying the full filing fees or costs or giving other security therefor. This Order granting IFP status shall not extend to issuance or service of subpoenas at government expense.
2. Plaintiff shall be required to pay an initial partial filing fee in the amount of \$22.47 toward the full filing fee of \$350.00. He shall have until **November 9, 2015**, to have the \$22.47 initial partial filing fee sent to the Clerk of the Court. Failure to do so may result in a recommendation to the district judge for dismissal of this action.
3. The Clerk of Court shall provide Plaintiff with two copies of this Order. Plaintiff is ordered to make the necessary arrangements to have one copy of this Order attached to a check in the amount of the initial partial filing fee designated herein.
4. Upon receipt of the initial partial filing fee, the Court will screen Plaintiff's Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(a). Even if this action is dismissed, Plaintiff must still pay the full \$350.00 filing fee pursuant to 28 U.S.C. § 1915(b)(2).
5. Beginning the month following Plaintiff's payment of the initial partial filing fee, the Clark County Detention Center ("CCDC") shall forward to the Clerk of the United States District Court, District of Nevada, twenty percent (20%) of the preceding month's deposits to Plaintiff's account (in the months that the account exceeds \$10.00) until the full \$350.00 filing fee has been paid for this action pursuant to 28 U.S.C. § 1915(b)(2). The Clerk of the Court shall send a copy of this Order to the Finance Division of the Clerk's Office and the CCDC Accounting Supervisor, 330 S. Casino Center Blvd. Las Vegas, NV 89101. If Plaintiff should be transferred and come under the care of the Nevada Department of Prisons, the CCDC Accounting Supervisor is directed to send a copy of this

1 Order to the attention of the Chief of Inmate Services for the Nevada department
2 of Prisons, P.O. Box 7011, Carson City, NV 89702, indicating the amount that
3 Plaintiff has paid towards his filing fee, so that funds may continue to be deducted
4 from Plaintiff's account.

5 Dated this 9th day of October, 2015.

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8 PEGGY A. LEEN
9 UNITED STATES MAGISTRATE JUDGE
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